

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JAMES N. BATES and  
STEPHEN J. LEWIS

Application No. 09/879,710

MAILED

FEB - 7 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on December 28, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that on April 11, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c), which states in part:

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment

of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application reveals that these two sections are missing from the Appeal Brief filed April 11, 2005. It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Additionally, we were unable to locate a copy of the Chemical Abstracts Registry File Printout of S-methyl Cysteine, 2002 reference relied on by the examiner on page 3 of the Examiner's Answer mailed June 29, 2005.

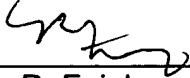
Accordingly, it is

ORDERED that the application is returned to the examiner to:

- (1) hold the Appeal Brief filed on April 11, 2005 defective;
- (2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37 or provide a revised Examiner's Answer addressing the appendices;
- (3) for the examiner to vacate the Examiner's Answer mailed June 29, 2005, and issue a revised Examiner's Answer which is in compliance with the headings as set forth in the new rules under 37 CFR § 41.37(c);

- (4) have a complete copy of the supplemental Appeal Brief and any subsequent Examiner's Answer scanned into the record;
- (5) locate the missing Chemical Abstracts Registry File Printout of S-methyl Cysteine, 2002 reference;
- (6) have complete copy of the Chemical Abstracts Registry File Printout of S-methyl Cysteine, 2002 reference scanned into the IFW file; and
- (7) for such further action as may be appropriate.

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